

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1308 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHAMMAD ILIYAS

MOHAMMADHUSSAIN SHAIKH

Versus

VAKAR AHMED ABDUL HAMID SHAIKH

Appearance:

MR MC BHATT for Petitioner

MR SURESH M SHAH for Respondent No. 1,10,11

RULE SERVED for Respondent No. 9

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 12/04/99

ORAL JUDGEMENT

This Revision Application has been admitted and has been listed for final disposal pursuant to order dated 12.10.1998 passed by this Court (Coram: D C Srivastava, J.). Accordingly Rule was directed to have been issued and waived by Mr S M Shah, learned Advocate on behalf of respondents No. 1, 2, 3, 5, 6 to 8 and 11.

Rest are served, but they have not appeared. It is not in dispute that the petitioner has filed Special Suit No.126/97 before the learned Civil Judge (SD), at Valsad for obtaining following reliefs:

"(A) That the business of partnership be continued by and between the plaintiff, defendant No.2 and defendant No.3 and the ratio of share of the partners in the said partnership firm shall be: Plaintiff-10%, Defendant No.1-40%, Defendant No.2-40%, Defendant No.3-10% and further be pleased to declare that the share of late Abdul Hamid Jafar Shaikh and the defendant No.4 amounting to Rs.11,35,998.00 shall be paid by the partners in division of Plaintiff Rs.1,13,599.80 (Rupees One Lac Thirteen Thousand Five Hundred Ninety nine & Paise Eighty only), Defendant No.1 Rs.4,54,399.20, Defendant No.2 Rs.4,54,399.20 and Defendant No.3 Rs.1,13,599.80.

(B) Declare that the defendant No.4 Munaf Abdul Rehman Shaikh has retired from the suit partnership firm and that he is entitled to receive Rs.45,865.00 from the business of suit partnership firm.

(C) The Hon'ble Court be pleased to pass a decree to the effect that the defendant No.9 Izrahul Haq A. Shaikh is entitled to receive Rs.1,73,430.17 (Rupees One lac seventy three thousand four hundred thirty and paise seventeen only) towards his share out of amount of share standing to the credit of late Abdul Hamid Shaikh under Muslim Law of succession as stated in paragraph 6 hereinabove and further be pleased to declare that the defendant No.9 has no right, title or interest in the suit partnership firm henceforth.

(D) The Hon'ble Court be pleased to issue a decree of declaration declaring that the defendant No.1, defendant No.2, defendant No.5, defendant No.6, defendant No.7, defendant No.8, defendant No.10 are entitled to receive the amount standing to the share of late Abdul Hamid Jafar Shaikh as per the provisions of Muslim Law in the proportion stated in paragraph-6 of this Compromise Pursish.

(E) Be pleased to declare that apart from defendant No.1 and the defendant No.2, no other person has any right title or interest in the business of

suit partnership firm has heir of deceased Abdul Hamid Jafar Shaikh.

(F) Declare that defendant No.11 has no right or interest in the suit partnership firm."

The suit came to be filed on account of the fact that there has been attachment of the partnership properties and that can be noticed from the order passed by the Hon'ble Supreme Court which has been placed on record at page 87 of the present petition. The order reads as under:

"Writ Petition (Cri) No.451/95 relates to a petition under Article 32 of the Constitution, inter alia, challenging the order of the Judge presiding over the Designated Court under Terrorist and Disruptive Activities (Prevention) Act, Valsad Dist. at Navsari. Writ Petition (Cri) Nos. 453-58/95 relate to petitions challenging similar orders passed by the Designated Court. It is alleged by the petitioners in W.P.(Cri) No.451/95 that the property in question viz., a building belonged to the deceased husband of the petitioner and under the Muslim Law she has a share in the said property, hence, the son of the petitioner being a proclaimed offender, according to the designated court, the impugned order for attaching the said property, and keeping it under seal for enforcing the appearance of the said proclaimed offender, should not have been passed. In the other writ petitions, the petitioners are contending that one Abdul Hamid Mohammed Jafar Shaikh was a partner in respect of the said properties and such properties cannot be made the subject matter of attachment and other consequential orders since passed by the designated court for enforcing the appearance of the proclaimed offender viz; the son of the said Jafar Shaikh. It appears to us that so far as the dwelling house is concerned, in view of the death of the said Jafar Shaikh, the son being the proclaimed offender, prima facie, has a share in respect of the said property.

It is also not known whether the other properties really belong to the partnership and after the death of the said Jafar Shaikh whether the partnership survives. If so, who are the partners in respect of the properties in

question. The determination of title and share of the parties cannot be undertaken in these proceedings. Until a proper declaration of title is obtained from the competent civil court, we do not think any interference is called for in a petition under Article 32 of the Constitution. These petitions are, therefore, dismissed. It will be however, open to the petitioners to seek appropriate declaration of title in respect of the properties in question from the competent civil court and thereafter to approach the learned Designated Court for modification of the order of attachment and other consequential orders passed for enforcing the appearance of the accused in the said case. We make it clear that we have not expressed any opinion on the claim of title sought to be raised by the petitioner(s)."

2. During the pendency of the suit, the parties had an occasion to arrive at a settlement and place the same on record for the trial court to pass appropriate orders on the settlement and the same was placed at Exh.54 in the suit. The trial court had taken up Exh.54 for consideration and it passed an order rejecting the compromise pursis with no order as to costs. In so far as the first ground for rejection of the compromise is concerned, the trial court has observed that the suit itself was hit by section 69 of the Partnership Act on account of want of registration of the firm in the name and style of M/s.Prince Automobiles. The trial court has come to the conclusion that a partner of the petitioner firm in question filed suit against defendant No.4 who was a continuing partner and hence the partnership firm must be registered. In my opinion, on perusal of the main relief quoted above, it would clearly appear that in substance the petitioner filed suit for ascertainment of shares and account of the dissolved firm on account of death of one of the partners viz; deceased Abdul Hamid Jafar Shaikh, who died on 14.12.1994. Therefore, it is clear that the rejection of the compromise pursis Exh.54 on that ground is nothing but failure on the part of the trial court to exercise jurisdiction in respect of the compromise pursis.

3. In so far as rest of the grounds set out in the impugned order is concerned, Mr M C Bhatt, learned Advocate appearing for the petitioner submits that he would first join the Official Receiver who has been appointed by the Designated Court on account of the attachment order which has been referred to in the

aforesaid order of the Hon'ble Supreme Court and give copy of the settlement to the Official Receiver. If that is so, for the present, the impugned order cannot stand and following directions will have to be issued:

The impugned order is hereby set aside. The petitioner will join Official Receiver as aforesaid as party-defendant in the Special Civil Suit No.126/97 pending before the learned Civil Judge (SD) at Valsad. As and when he is joined as party-defendant and as and when he appears before the trial court, the trial court will consider his objections, if any, to the compromise Exh.54 and after hearing the parties and the learned Advocates including the Official Receiver, the trial court will decide firstly, whether Exh.54 is required to be recorded as such and secondly, whether any reliefs would be granted in case the compromise pursis is not recorded. The trial court will decide the matter as expeditiously as possible preferably within two months from the date on which the Official Receiver appears before the trial court as aforesaid.

Rule made absolute in the aforesaid terms with no order as to costs.

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